

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT**

TRAVELERS INSURANCE CO.,	:	
Plaintiff-	:	
Counterclaim Defendant	:	
	:	
	:	
	:	
v.	:	Docket No. 1:01-CV-250
	:	
JOHN HENRY,	:	
Defendant-	:	
Counterclaimant	:	
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	:	
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MEMORANDUM OF DECISION

The facts of this case are set forth in the Court's ruling of April 12, 2002 (Paper 16), familiarity with which is assumed. There is no factual dispute, and the parties have stipulated that "Mr. Henry's total damages are equal to the sum of the available UIM coverage (\$500,000) and the total amount of workers compensation benefits that shall have been paid to him or for his benefit through the date final judgment in this matter is rendered." (Paper 94, ¶ 2). There remains only a question of law regarding the meaning of the 1999 amendment to Vt. STAT. ANN. tit. 21, § 624(e) (2001). At issue is the effect of the 1999 amendment on the insurance policy purchased by Mr. Henry's employer for his benefit, and specifically, whether this policy is protected from Travelers'

reimbursement rights. For the reasons discussed below, the Court finds that the 1999 amendment exempts from reimbursement the underinsured motorist ("UIM") policy purchased by Mr. Henry's employer, except to prevent double recovery.

DISCUSSION

Vermont law requires an injured worker to reimburse a workers' compensation insurer for workers' compensation benefits paid to the injured worker if the injured worker receives damages that also compensate for the injury. Vt. STAT. ANN. tit. 21, § 624(e) (2001). Section 624(e) was amended in July 1999 by the following addition:

Reimbursement required under this subsection, except to prevent double recovery, shall not reduce the employee's recovery of any benefit or payment provided by a plan or policy that was privately purchased by the injured employee, including uninsured-under insured motorist coverage, or any other first party insurance payments or benefits.

Tit. 21, § 624(e).

Travelers argues the UIM policy purchased by Bouyea Fassetts ("Best Foods") for the benefit of Mr. Henry is subject to Travelers' reimbursement right. Conversely, Mr. Henry contends he need not reimburse Travelers, except to the extent his damages constitute "double recovery." Resolving this legal issue requires an interpretation of § 624(e) in light of the 1999 amendment.

This amendment was enacted in the wake of Travelers Cos.

v. Liberty Mut. Ins. Co., in which the Vermont Supreme Court interpreted the pre-amendment statute to treat proceeds from a UIM policy purchased by the injured party's employer as a recovery from a "third party" subject to reimbursement rights of the employer's workers' compensation insurance carrier. 164 Vt. 368, 372-73 (1995). When viewed in this context, the amendment arguably was enacted for the very purpose of overruling Travelers Cos. v. Liberty Mut.. See Travelers Ins. Co. v. Carpenter, 313 F.3d 97, 108 (2d Cir. 2002).

At a hearing on October 10, 2003, Travelers argued that the amendment to § 624(e) is limited to privately purchased UIM policies by an insured and does not exempt the UIM policy purchased by an employer such as Best Foods. This reading of the amended statute, however, is too narrow, for it ignores the plain meaning of the final clause which reads: "or any other first party insurance benefits or payments." Tit. 21, § 624(e). The plain language of the statute protects two types of recoveries from reimbursement rights of the workers compensation insurer: (1) payments from privately purchased plans (including UIM coverage); and (2) payments from any other first party plan.

The legislative history of the 1999 amendment supports this interpretation. The Senate Calendar for May 12, 1999 which includes the amendment to § 624(e) details how the

language ultimately adopted differed from that which was originally proposed. See Amendment to Proposal of Amendment of the Committee on General Affairs and Housing to H. 103, Senate Calendar May 12, 1999, available at <http://www.leg.state.vt.us/docs/2000/calendar/sc990512.htm>. The language originally proposed was as follows:

Reimbursement required under this subsection . . . shall not reduce the employee's recovery of any benefit or payment provided by a plan or policy, including under-insured motorist coverage or any other first party insurance payment or benefit, that was privately purchased by the injured employee.

Id. As ultimately enacted by the legislature, the clause "or any other first party insurance payments or benefits" was moved to the end of the amendment, which renders the "other first party insurance payments or benefits" clause not subject to the "privately purchased" modifier. Thus, as adopted, "other first party insurance payments or benefits" need not be privately purchased in order to be protected from the workers compensation carrier's reimbursement rights.

The UIM policy purchased on behalf of Mr. Henry by his employer is a first party insurance policy and proceeds from it are exempted from reimbursement to the workers compensation carrier by the plain meaning of the statute. The plain meaning of the text controls. See 313 F.3d at 106 (citing Weissenstein v. Burlington Bd. of Sch. Comm'rs, 149 Vt. 288, 292 (1988)).

The Court declines to certify this question to the Vermont Supreme Court since the effect of the amendment can be determined from the plain meaning of the text. See Riordan v. Nationwide Mut. Fire Ins. Co., 977 F.2d 47, 51 (2d Cir. 1992) (holding that certification is a discretionary device for the certifying court).

CONCLUSION

The payments from the UIM policy purchased by Mr. Henry's employer on his behalf are exempt from Travelers' reimbursement right under § 624(e), except to prevent double recovery. Travelers' Motion for Certification of Questions to the Vermont Supreme Court is DENIED. In light of the Court's ruling, the parties shall consult and provide the Court with a proposed judgment order. In the event they are unable to agree, each party shall submit a proposed order and any supporting authorities on or before November 14, 2003.

SO ORDERED.

Dated at Brattleboro, Vermont this ____ day of November, 2003.

J. Garvan Murtha, U.S. District Judge